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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 467. 205

THE UNITED STATES, PLAINTIFF,

vs.

BAPTISTE LE BRIS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 8, 1883.

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1 United States circuit court, district of Minnesota.

Be it remembered that at a circuit court of the United States of America, begun and held at the city of St. Paul, in and for the district of Minnesota, on the third Monday of June, A. D. 1883, present honorable Samuel F. Miller, a justice of the Supreme Court of the United States, assigned to said circuit, and Renssalaer R. Nelson, judge of said district.

THE UNITED STATES OF AMERICA
vs.
BAPTISTE LE BRIS.

On the 6th day of July, A. D. 1883, Dolsen B. Searle, esq., U. S. attorney in and for said district, came into said court and, by leave thereof first duly obtained, filed a criminal information against the above-named defendant, Baptiste Le Bris, of the tenor following, to wit:

Affidavit on application to file information.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

C. A. Congdon, being duly sworn, says that he is the asst. U. S. attorney in and for the district of Minnesota. That each and every allegation in the criminal information hereto annexed and charging Baptiste Le Bris with the introduction of spirituous liquors into the Indian country is true, as deponent verily believes. That the foundation of deponent's belief is, first, an affidavit made June 3rd, 1882, before Frank Ives, a U. S.
2 circuit court commissioner in said district, charging said Le Bris with selling spirituous liquors to an Indian named Comba, then and there under the charge of an Indian agent at Thief River, in said district, and in the Indian country described in said information, and which said affidavit is now on file in the U. S. district court for this district. Second, upon the testimony of the witnesses upon the preliminary examination had before said Ives in the case of said Le Bris upon the charge contained in said affidavit. Third, upon the unsworn statements of said Comba to said deponent.

And further deponent saith not, save that this affidavit is made for the purpose of getting leave of court to file in the U. S. circuit court for said district the information hereto annexed against said Baptiste Le Bris.

C. A. CONGDON.

Sworn before me July 6th, 1882.

WM. A. SPENCER, *Clerk.*

[SEAL U. S. DIST. COURT, DIST. MINN.]

Said information is in words and figures as follows:

Circuit court of the United States of America for the district of Minnesota.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that Dolsen B. Searle, attorney of the United States of America in and for the district of Minnesota, who for the said United States prosecutes in this behalf, in his proper person comes here into the

circuit court of the said United States in and for the district of
3 Minnesota, at Saint Paul, on Friday, the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-three, and for the said United States giveth the court here to understand and be informed that Baptiste Le Bris, late of the county of Polk in said district, yeoman, heretofore, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and eighty-three, in the county of Polk, in the district of Minnesota aforesaid, and within the jurisdiction of this court, with force and arms unlawfully did introduce, from some place and territory outside of the Indian country, into the Indian country, to wit, into that part thereof lying and being in the county of Polk, in said district, and being and known as the Red Lake and Pembina Indian Reservation, certain spirit'ous liquors, to wit, one gallon of whiskey, which said introduction of the said spirit'ous liquors into the Indian country as aforesaid was then and there not by the order of or under authority from the War Department, or any officer duly authorized thereunto by the War Department, against the peace of the said United States and their dignity, and contrary to the form of the statute in such case made and provided.

Wherefore the said attorney of the United States prays the consideration of the court here in the premises and that due process of law may be awarded against the said Baptiste Le Bris in this behalf to make him answer touching and concerning the premises aforesaid.

DOLSEN B. SEARLE,
United States Attorney for the District of Minnesota.

(Endorsed:) Filed July 6th, 1883. O. B. Hillis, clerk.

4 And afterwards, to wit, on the 19th day of July, A. D. 1883, came the defendant, by his attorney, and filed herein a demurrer in words and figures as follows:

In the circuit court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
BAPTISTE LE BRIS.

Now comes Baptiste Le Bris, the defendant named in a certain information, heretofore to wit, on the sixth day of July, in the year 1883, preferred against this defendant before said court by D. B. Searle, esq., district attorney of the United States for the district of Minnesota, and demurs to such information, and assigns as the ground of his demurrer that the information aforesaid does not set forth facts which constitute a public offense.

Wherefore, for want of a sufficient information in this behalf, the said Baptiste Le Bris prays judgment and that by this court he may be dismissed and discharged from the said premises in the said information specified.

JNO. W. WILLIS,
Attorney for Defendant.

SAINT PAUL MINNESOTA, *July 18th*, 1883.

(Endorsed:) Filed July 19th, 1883. O. B. Hillis, clerk, by Fred. P. Barnett, deputy.

5 And afterwards on the same day the following stipulation of the parties herein was filed in said cause in words and figures as follows, to wit:

United States circuit court, district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
BAPTISTE LE BRIS.

It is hereby stipulated by and between the parties to the above-entitled action, and it is expressly admitted by the said defendant that the locus in quo referred to in the criminal information herein is in the county of Polk and State of Minnesota, and that it is east of the Thief River and the line drawn from the mouth of the Thief River toward the head of the Wild Rice River, which line is more fully described in article 2 of the treaty of Oct. 2, 1863, between the United States and the Red Lake and Pembina bands of Chippewa Indians.

Dated July 19, 1883.

C. A. CONGDON,
Ass't U. S. Att'y.
JNO. W. WILLIS,
Counsel for Defendant.

(Endorsed:) Filed July 19th, 1883. O. B. Hillis, clerk.

6 Thereupon and on said day the following order was entered of record in said cause in words and figures as follows, to wit:

United States circuit court, district of Minnesota. Term minutes, June term, A. D. 1883. July 19, 1883.

THE UNITED STATES
vs.
BAPTISTE LE BRIS.

This day come the parties herein, the United States by C. A. Congdon, asst. U. S. attorney, and the defendant by his attorney, John W. Willis, esq., and by agreement of said attorneys it is considered that defendant is arraigned. Thereupon comes defendant's said attorney and files his demurrer to the information herein. And it is further agreed by and between said attorneys that the hearing of said demurrer be submitted to Hon. Justice Miller & Hon. R. R. Nelson, judge, on printed briefs to be filed on or before September 1st next, and that said briefs & a copy of the files herein be sent to Mr. Justice Miller, at Block Island.

Thereafter, to wit, on the 9th day of October, A. D. 1883, a further stipulation was filed in said cause in words and figures as follows, to wit:

United States circuit court, district of Minnesota.

THE UNITED STATES
vs.
BAPTISTE LE BRIS.

7 It is hereby stipulated in the above-entitled action that the order heretofore entered in said action whereby the issues of law therein

were submitted on briefs to Hon. Justice Miller and Hon. Judge Nelson be, and the same is hereby, vacated; and it is further stipulated that said issues of law be, and they hereby are, submitted, on the same briefs, to Hon. Justice Miller and Hon. Judge McCrary; and it is further stipulated that in the event that Justice Miller and Judge McCrary should differ as to any question of law raised by the demurrer herein and hereby submitted to them, such question may be certified by them to the Supreme Court of the United States.

Dated Oct. 6th, '83.

C. A. CONGDON,
Ass't U. S. Attorney.
JOHN W. WILLIS,
Def't. Attorney.

(Endorsed:) Filed October 9th, 1883. O. B. Hillis, clerk.

Thereupon, pursuant to said last-named stipulation, the following order of court was entered of record on said day in words and figures as follows, to wit:

United States circuit court, district of Minnesota. Term minutes, June term, A. D. 1883. Oct. 9th, 1883.

THE UNITED STATES
vs.
BAPTISTE LE BRIS.

Pursuant to a stipulation of parties this day filed herein, it is ordered that the order heretofore entered herein, viz, order entered on the
8 19th day of July, A. D. 1883, whereby the issues of law herein were submitted on briefs to Hon. Samuel F. Miller, circuit justice, and Hon. R. R. Nelson, judge, be, and the same is hereby, vacated and set aside, and in lieu thereof, pursuant to said stipulation, it is further ordered that said issues of law be, and the same are hereby, submitted upon the same briefs to Hon. Samuel F. Miller, circuit justice, and Hon. George W. McCrary, circuit judge, and that in the event Justice Miller and Judge McCrary should differ as to any question of law raised by the demurrer herein and hereby submitted to them, such question be by them certified to the Supreme Court of the United States.

Thereupon and in pursuance of the aforesaid proceedings the following questions of law occurred and were submitted:

1. Is the reservation of the Red Lake and Pembina Indians in Polk County, Minnesota, Indian country, within the meaning of section twenty-one hundred and thirty-nine (2139) of the Revised Statutes of the United States?

2. What is meant by Indian country in the heading of chapter four (4), title twenty-eight (28) of the Revised Statutes of the United States, and in the sections in that chapter which define crimes committed in Indian country?

3. Does section fifty-five ninety-six (5596) of the Revised Statutes of the United States repeal and abolish the definition of Indian country

found in section one (1) of the trade and intercourse act of 1834, or found in 4 U. S. Statutes at Large, page 729?

4. If it does, are all the provisions of chapter 4, title 28, for punishment of crime in Indian country, nugatory?

5. If the provisions of chapter 4, title 28 of the Revised Statutes, are not rendered nugatory by Section 5596 of the Revised Statutes, to what locality do they apply?

On each and every of which questions the said Hon. Samuel F. Miller, circuit justice, and Hon. George W. McCrary, circuit judge, did disagree and were divided in opinion. Whereupon, upon the request of the United States attorney that each and every of said questions upon which said disagreement has happened may, during the same term of this court, be stated under the direction of the judges and certified under the seal of the court to the Supreme Court of the United States to be finally decided. And further order was entered in said cause, viz:

Order of Oct. 31st, A. D. 1883, in words and figures following, to wit:

THE UNITED STATES
vs.
BAPTISTE LE BRIS.

Ordered, that the abstract of the pleadings, facts, and statement of questions of law upon which the disagreement has happened in this cause, which was made under direction of the judges, be certified according to the request of the United States attorney and the consent of defendant's counsel and according to the law in such cases made and provided; and it is further ordered by the court that this cause be continued until the decision of the Supreme Court of the United States in the premises.

Circuit court of the United States.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of ten (10) pages, numbered consecutively from one (1) to ten (10) inclusive, is a true and complete transcript of the records, pleadings, orders, final order of division of opinion, and certification and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 2nd day of November, A. D. 1883.

[SEAL.] OSCAR B. HILLIS,
Clerk.

(Indorsement on cover:) No. 467. The United States, plaintiff, vs. Baptiste Le Bris. Minnesota C. C. U. S. Filed 8th November, 1883.

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Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES, PLAINTIFF,
vs.
BAPTISTE LE BRIS. } No. 205.

ON CERTIFICATE OF DIVISION IN OPINION CIRCUIT COURT UNITED STATES DISTRICT OF MINNESOTA.

Brief for the United States.

WM. A. MAURY,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES, PLAINTIFF,
vs.
BAPTISTE LE BRIS. } No. 205.

ON CERTIFICATE OF DIVISION IN OPINION CIRCUIT COURT UNITED STATES DISTRICT OF MINNESOTA.

This is an information charging that the defendant Le Bris, on the 1st May, 1883, introduced into that part of the Indian country situate in the county of Polk, in the State and district of Minnesota, and known as the Red Lake and Pembina Reservation, certain spirituous liquors without authority (R., pp. 1–2).

To this information the defendant demurred (R., p. 2).

The learned judges before whom the demurrer was argued were divided in opinion and certified the following questions to this court:

1. Is the reservation of the Red Lake and Pembina Indians in Polk County, Minnesota, Indian country, within the meaning of section twenty-one hundred and thirty-nine (2139) of the Revised Statutes of the United States?

2. What is meant by Indian country in the heading of chapter four (4), title twenty-eight (28) of the Revised Statutes of the United States, and in the sections in that chapter which define crimes committed in Indian country?

3. Does section fifty-five ninety six (5596) of the Revised Statutes of the United States repeal and abolish the definition of Indian country found in section one (1) of the trade and intercourse act of 1834, or found in 4 U. S. Statutes at Large, page 729?

9 4. If it does, are all the provisions of chapter 4, title 28, for punishment of crime in Indian country, nugatory?

5. If the provisions of chapter 4, title 28 of the Revised Statutes, are not rendered nugatory by section 5596 of the Revised Statutes, to what locality do they apply? (R., pp. 4, 5.)

And, thereupon, further proceedings under the said information were suspended until the questions certified should be answered by this court (R., p. 5).

Argument.

The one great question on which all the others turn is as to what "Indian country," as defined by law, is meant by Congress in the various provisions of the Revised Statutes composing chapter 4, title 28, §§ 2127–2157, for the government of the Indian country.

Congress has at different times and in connection with its legislation for the protection of the Indians defined what the Indian country was. Its last legislation on the subject is to be found in the first section of the act of 30th June, 1834 (4 Stat., 729), which is as follows:

> ***Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*** **That all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana or the territory of Arkansas, and, also, that part of the United States**

> east of the Mississippi River, and not within any State to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.

If this section is still in force it might be, and no doubt was, contended in the court below that inasmuch as the reservation mentioned in the information lies wholly within the State of Minnesota it forms no part of the Indian country as defined by law.

It is conceived, however, that the difficulty in the question presented is removed when we consider that since the passage of the act of 1834 the policy of the Government in dealing with the Indians has been changed in a fundamental way, and the system of confining the various tribes to reservations has been introduced.

This change has been effected by various treaties, which in defining the outboundaries of the several reservations have, by necessary intendment, defined the Indian country as thus broken up into divers isolated territories.

The treaties mentioned may not have designated these reservations as *Indian country*, but the necessary effect of their provisions was to make them such; for if the several localities in which the Indian tribes who inhabited the Indian country, as defined by the act of 1834, are not Indian country by virtue of these treaties, which have to that extent displaced and repealed the act of 1834, it is impossible to understand what is Indian country. This view would seem to have received the concurrence of this court in United States *v.* Forty-three Gallons of Whisky (93 U. S., 195–'96).

When, therefore, Congress refers to the Indian country in the Revised Statutes it refers to it as then defined by the treaties referred to as the latest expressions of the law-making power.

But the treaty with the Red Lake and Pembina bands of Chippewa Indians of the 2d October, 1863 (13 Stat., 667–669), would seem to remove the question in hand from the domain of doubt.

That treaty by its second article cedes the reservation named in the indictment to the United States, but by the eighth article reserves to each of the said Indians who has adopted the habits and customs of civilized life and is a citizen of the United States a homestead of 160 acres of the land ceded, and by its seventh article provides that "the laws of the United States now in force, or that may hereafter be enacted, prohibiting the introduction and sale of spirituous liquors in the Indian country, *shall be in full force and effect throughout the country hereby ceded until otherwise directed by Congress or the President of the United States.*"

Now this court has twice recognized the validity of and enforced this article, holding that it operated *proprio vigore* and *was binding upon the courts, although the ceded territory was within an organized county of a State* (U. S. *v.* Forty-three Gallons of Whisky, 93 U. S., 188; s. c., 108 U S.; see also *Ex parte* Crow Dog, 109 U. S., 567.)

Whether, then, the reservation in question is "Indian country" or not, in the strict sense of

that term, the treaty gives it that *status* and makes the legislation touching the introduction of liquor into the Indian country operative within the ceded territory until Congress or the President shall have directed otherwise, and this court has decided that the treaty is valid in that particular.

It remains, then, to say that the law referred to in the 20th Section of the 7th Article of the treaty is the act of 30th June, 1834, (4 Stat., 732) as amended by the act of 15th March, 1864, (13 Stat., 29), which is as follows:

> SEC. 20. *And be it further enacted*, That if any person shall sell, exchange, barter, or dispose of any spirituous liquors or wine to any Indian under the charge of any Indian superintendent or Indian agent appointed by the United States, or shall introduce or attempt to introduce any spirituous liquor or wine into the Indian country, such person, on conviction thereof before the proper district or circuit court of the United States, shall be imprisoned for a period not exceeding two years, and shall be fined not more than $300: Provided, however, That it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor

into the Indian country if it be proved to be done by order of the War Department, or any officer duly authorized thereunto by the War Department. And if any superintendent of Indian affairs, Indian agent or subagent, or commanding officer of a military post has reason to suspect, or is informed, that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country, in violation of this section, it shall be lawful for such superintendent, subagent, or commanding officer to cause the boats, stores, packages, wagons, sleds, and other places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bonds put in suit. And it shall, moreover, be the duty for any person in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country except such as may be introduced therein by the War Department. And in all cases arising under this act Indians shall be competent witnesses.

Inasmuch as the Revised Statutes contain some of the provisions of the act of 1834, *not including* the one defining the Indian country, it would seem that the omission operated a repeal of the latter provision as provided in section 5596 Revised Statutes.

But it would appear unnecessary to pursue the subject, for, if what has been settled by this court is to be adhered to, it disposes of all the questions certified.

WM. A. MAURY,
Assistant Attorney-General.